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## ARTICLE

### **Foucault, Ferguson, and civil society\***

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**ABSTRACT:** In contrast to those who trace civil society to “community” per se, Foucault is keen to locate this concept as it emerges at a particular moment in respect of specific exigencies of government. He suggests that civil society is a novel way of thinking about a problem, a particular problematization of government that emerges in the eighteenth century and which combines incommensurable conceptions of the subject as simultaneously a subject of right and of interests. This article takes up Foucault’s discussion of the Scottish Enlightenment in *The Birth of Biopolitics* to trace the distinctiveness of his discussion of civil society, but also in order to suggest that we ought to pay closer attention to the tensions between commercial-civilizational and civic republican themes in the literature of the late eighteenth century than does Foucault. It is my tentative suggestion that Foucault’s account leaves out significant aspects of these debates that offer counter-valences to the dominant models of the subject available to contemporary political discourse.

Keywords: civic virtue; Ferguson; genealogy; intellectual history; interests; society

This article stems from a puzzle I generated for myself whilst reading Foucault’s *The Birth of Biopolitics*.<sup>1</sup> Its focus is a small but significant moment in the text of those lectures, where Foucault alights upon Ferguson’s *An Essay on the History of Civil Society* (1767) to exemplify the emergence of the subject of interests.<sup>2</sup> I’d read Ferguson’s essay some time prior to reading Foucault’s lectures, and had a firm sense that “my” Ferguson, the highlander, republican thinker from the late eighteenth century was an odd fit with “Foucault’s Ferguson,” the purveyor of commercial society and its interests. I decided to push this lack of fit between the two Fergusons. What precisely was and is at stake here? Is this just a minor argument with Foucault in which he holds up his hands and disclaims “I’m not a professional historian”? Fou-

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\* Thanks to James Brown, Graham Burchell, Colin Gordon, Andreas Hess, Tom Osborne and two anonymous reviewers for helpful discussions and for comments on previous drafts of this text.

<sup>1</sup> Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France 1978-1979*, edited by Michel Senellart, translated by Graham Burchell (Hampshire: Palgrave Macmillan, 2008).

<sup>2</sup> Adam Ferguson, *An Essay on the History of Civil Society* (Edinburgh: Edinburgh University Press, 1966 [1767]).

cault's reading of seventeenth and eighteenth century writers such as Locke, Hume, Smith, and Ferguson is a reading across several texts in order to draw together from disparate sources the outline of a new figure that he claims is emerging, the subject of interests; its aim is not a detailed intellectual history but a genealogy of the present. Moreover, *The Birth of Biopolitics* is a lecture course and not a scholarly text with all the usual trappings of scholarly apparatus. So, my argument should not be read as a complaint that Foucault was insufficiently professional as an historian of ideas, but rather in the spirit of disclosing how there were more and different possibilities in this moment of the formation of "civil society" in the late eighteenth century than Foucault's text suggests. I'm intrigued that a reader as original and attentive as Foucault should obliterate the civic republicanism of Ferguson's essay. This is arresting, because it is so obvious an omission.

Eighteenth century Scottish debates conceived a model of progress as "civilization" through the development of commerce, civility, and market exchange; "civil society" was advanced society, civil being related to civilised and polite, as opposed to the rude, savage, and barbarian. Within this newly conceived understanding of civilization, eighteenth century writers contested the relationship between wealth and virtue: if civil society produced moral progress through a refinement of manners, was this inversely related to civic virtue? Could wealth and virtue be generated together or were they in tension with each other?<sup>3</sup> Foucault was keenly aware of the novelty of the Scottish Enlightenment and interested in the ways in which its authors produced a newly historicised conception of society. His interest in this in *The Birth of Biopolitics* reflects a longstanding concern for the transformations in a number of orders of knowledge in the eighteenth century as evidenced, for example, by his discussion of the emergence of political economy in *The Order of Things*.<sup>4</sup>

Ferguson is a transitory figure in late eighteenth century Scottish debates about the relationship between wealth and virtue.<sup>5</sup> Foucault focuses on Ferguson in the service of providing a map of a new figure: the subject of interests. His sketch of this subject takes place in the course of lectures given across 1978 and 1979, whose overall concern is to outline a history of governmentality. In this, civil society plays a distinctive role. But what Foucault takes to be antonyms (possibly for sake of clarity given the lecture format, or maybe because of his cartographic way of proceeding), the subject of interest and the subject of right, are perhaps better framed, following Burchell, as ambiguities of a new ethico-political model of the subject.<sup>6</sup> And here we encounter not just the subject of right versus the subject of interest, but a triangle: the

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<sup>3</sup> See Istvan Hont and Michael Ignatieff (eds.), *Wealth and Virtue: the shaping of political economy in the Scottish Enlightenment* (Cambridge: CUP, 1983); Jose Harris, (ed.), *Civil Society in British History: Ideas, Identities, Institutions* (Oxford: Oxford University Press, 2003).

<sup>4</sup> Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (London: Routledge, 1970 [1966]). There is unfortunately no space here to develop a comparison between Foucault's treatment of political economy in these two texts.

<sup>5</sup> A debate that has not gone away, see, e.g. Michael Sandel, *What Money Can't Buy: The Moral Limits of Markets* (London: Allen Lane, 2012).

<sup>6</sup> Graham Burchell, "Peculiar Interests: civil society and governing 'the system of natural liberty'," in Graham Burchell, Colin Gordon and Peter Miller (eds.), *The Foucault Effect: studies in governmentality*, (Chicago: University of Chicago Press, 1991), 122.

subject of right, the subject of interest, and the subject of civic virtue. While the first two terms will become increasingly dominant from the nineteenth century onwards, all three figures are present in the eighteenth century Scottish debate.

The argument proceeds as follows. Section one provides an account of Foucault's analysis of civil society as emerging in the eighteenth century, where this combines the heterogeneous figures the subject of right and the subject of interest. The second section attempts to locate Foucault's account in relation to the work of intellectual historians who have analysed the conceptual flux of the period. Section three then develops a discussion of Foucault's reading of Ferguson, suggesting that this contains unhelpful moments of anachronism and abstraction on Foucault's part, and arguing that in Ferguson's work we can locate a distinctively civic conception of the subject that is missed by Foucault. This discussion is conducted with the aim of retrieving from the late eighteenth century debates a moment when other possibilities of politics were present. Foucault's account, perceptive though it is of the ways in which we are governed now, closes toward the present. Others have suggested that there is a potentially productive complementarity between the work of Foucault and that of intellectual historians such as Quentin Skinner and John Pocock; there would be great merit in further work bringing together Foucault's genealogical approach with work in intellectual history.<sup>7</sup>

### Foucault on civil society

Civil society has recently been a rallying cry as well as a site for sociological analysis. John Hall observes that in contemporary discussions of civil society hope has tended to replace analysis, "civil society designates both a normative horizon and a description of a sociological condition"; John Dunn is more scathing, charging most current uses of the term with "irremediable vagueness."<sup>8</sup> Foucault's take on civil society usefully deflates the idea that civil society offers an unproblematic normative horizon.<sup>9</sup> Reflecting on his own practice at the beginning of the *Birth of Biopolitics*, we find Foucault stating that he intends to begin from governmental practice, to refuse to take given ideas such as the state, civil society, sovereignty, and so on, as primary or original. Thus where the proponents of civil society as a source of resistance to the status quo tend to gesture to a space outside power, Foucault prefers to attempt to provide

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<sup>7</sup> See in particular Burchell, "Peculiar Interests," and Colin Gordon, "Foucault in Britain," in Andrew Barry, Thomas Osborne and Nikolas Rose (eds.), *Foucault and Political Reason: Liberalism, neo-liberalism and rationalities of government* (London: UCL Press, 1996).

<sup>8</sup> John A. Hall, "Reflections on the making of civility in society," in Frank Trentmann (ed.), *Paradoxes of Civil Society: new perspectives on modern German and British history* (Oxford: Bergham Books, 2000), 47; John Dunn, "The contemporary political significance of John Locke's conception of civil society," in Sudipta Kaviraj and Sunil Khilnani (eds.) *Civil Society: History and Possibilities* (Cambridge: CUP, 2001), 40. Of course, not all writers on civil society can be charged with vacuity; some have developed thoughtful and nuanced accounts, for example see Jeffrey Alexander, *The Civil Sphere* (Oxford: OUP, 2006) and *Real Civil Societies: dilemmas of institutionalization* (London: Sage, 1998); John Keane, *Democracy and Civil Society* (London: Verso, 1988); Adam B. Seligman *The Idea of Civil Society* (New York: The Free Press, 1992).

<sup>9</sup> Samantha Ashenden, "Questions of Criticism: Foucault and Habermas on civil society and resistance," in Samantha Ashenden and David Owen (eds.) *Foucault Contra Habermas: Recasting the Dialogue Between Genealogy and Critical Theory* (London: Sage, 1999), 143-165.

genealogical reflection on how such entities are formed.<sup>10</sup> This informs his conception of civil society as a transactional rather than primordial reality, and thus his refusal of the idea that it is a phenomenon that simply “asserts itself, struggles, and rises up, which revolts against and is outside government or the state.”<sup>11</sup> His, then, is a prosaic demand for closer attentiveness to the processes by which we’ve become what we are. We can pursue this by examining Foucault’s reflections on liberalism in *The Birth of Biopolitics*.

Liberalism does not derive from juridical thought any more than it does from an economic analysis. It is not born from the idea of a political society founded on a contractual bond.<sup>12</sup>

In *The Birth of Biopolitics* Foucault observes that “civil society” is “the correlate of the liberal art of government.”<sup>13</sup> Civil society is, he suggests, a “transactional reality” borne in an attempt to answer the question “how to govern, according to the rules of right, a space of sovereignty which for good or ill is inhabited by economic subjects.”<sup>14</sup>

Civil society is [...] the correlate of a technology of government the rational measure of which must be juridically pegged to an economy understood as process of production and exchange. The problem of civil society is the juridical structure (*économie juridique*) of a governmentality pegged to the economic structure (*économie économique*).<sup>15</sup>

Referring to eighteenth century debates, Foucault suggests that the notion of civil society enabled the writers of the Scottish Enlightenment to avoid the “theoretical and juridical problem of the original constitution of society.”<sup>16</sup> Clarifying his position, Foucault notes that this should not be taken to imply that the juridical problem of the exercise of power disappears—it continues—“but the way in which it is posed is reversed.”<sup>17</sup> Foucault observes that in seventeenth and eighteenth century contractarian arguments the search was for “a juridical form at the origin of society [...] which would limit the exercise of political power in advance.”<sup>18</sup> By contrast, theorists of civil society from the late eighteenth century to today formulate the problem as one of how to delimit power within a society that is already extant: “With its juridical structure and institutional apparatus, what can the state do and how can it function in relation to something, society, which is already given?”<sup>19</sup> This formulation draws attention to the reversal of assumptions that occurs in the political thinking of the late eighteenth century. Up until this time, it is fair to say that “society” was conceived as politically constituted, and the key problem was therefore the political institution of society; note, for example, that Locke does not dif-

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<sup>10</sup> Foucault, *Birth of Biopolitics*, 2-7. See also Michel Foucault, “Nietzsche, Genealogy, History,” in Paul Rabinow (ed.), *The Foucault Reader* (London: Penguin, 1986).

<sup>11</sup> *Ibid.*, 297.

<sup>12</sup> *Ibid.*, 321.

<sup>13</sup> *Ibid.*, 291.

<sup>14</sup> *Ibid.*, 297, 295-6.

<sup>15</sup> *Ibid.*, 296.

<sup>16</sup> *Ibid.*, 308.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*, 309.

<sup>19</sup> *Ibid.*

ferentiate political society and society/civil society.<sup>20</sup> In late eighteenth century debates such as those of the Scottish Enlightenment, this is reversed: social order is posited as developing through man's natural sociability, and the problem of government is centrally a problem of how to provide property and the rules of justice with a stable foundation. In this latter conception, society is itself regarded as preceding government. We can see this, for example, in the way Adam Ferguson refuses a Hobbesian state of nature: for Ferguson man is always already sociable.<sup>21</sup> It is also evident in Adam Smith's argument against mercantilism: attempts at the centralised political ordering of exchange cannot but produce problems because the sphere of market exchange is a dense web of interactions prior and opaque to sovereignty. Smith responds to the idea that grain is a political commodity with a moral but also (and crucially) an epistemological critique: mercantilism is wrongheaded because the kind of knowledge of markets that would be necessary to make it succeed is not available.<sup>22</sup>

What Foucault is pointing to here is a transformation, also recognised by intellectual historians and some social theorists, whereby from the eighteenth century on a proto-sociological account of social order progressively displaces the question of the political foundations of society. Or, to put the matter differently, he's sketching an account of the emergence of the social, and of the idea of society as a system of interconnections amongst strangers that, beginning in the eighteenth century, overtakes older connotations of "society" as companionship or fellowship.<sup>23</sup> Foucault's analysis of this new formation is striking in its originality and its capacity to apprehend the minutiae of power relations. He writes about a doubling of forms of rule within modern political rationalities, whereby we are simultaneously juridically and biopolitically constituted: the modern state addresses us both as citizens with rights, and as subjects of pastoral supervision and biopolitical intervention. On the one hand we are governed according to the rules of right, and on the other hand we are governed through norms immanent to population. This gives a distinctive way of analysing the operation of modern power and, contrary to many uses of the term "civil society" to refer to a domain outside power, suggests that the autonomous individuals of civil society are not outside governance so much as constituted by and through it; that is from this point of view, civil society is a transactional reality constituted by and through relations of rights and norms, it is not "outside" government.<sup>24</sup>

Senellart, commenting on the text of the lectures, observes that what Foucault is describing is the process by which, during the eighteenth century, the "principle of the external limitation of *raison d'Etat* by right is replaced by a principle of internal limitation in the form of the economy."<sup>25</sup> Indeed, Foucault suggests that the idea of civil society effects a re-centring of political reason from the idea of the necessity of wisdom on the part of governors, to the idea

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<sup>20</sup> John Locke, *Two Treatises of Government*, edited by Peter Laslett (Cambridge: CUP, 1988 [1688]).

<sup>21</sup> Ferguson, *Essay*.

<sup>22</sup> Foucault, *Birth of Biopolitics*, 283. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* edited by R. H. Campbell and A. S. Skinner (Glasgow: Liberty Fund, 1981 [1776]).

<sup>23</sup> Raymond Williams, *Keywords* (London: Fontana, 1976), 244. This is an idea taken up by, amongst others, Durkheim and Tönnies.

<sup>24</sup> Ashenden, "Questions of Criticism."

<sup>25</sup> Foucault *Birth of Biopolitics*, 327.

of calculation; and that as such government is not pegged to truth but to rationality.<sup>26</sup> Foucault seems to conceive this as a move from the moral to the economic. In a sense he's obviously right: arguably one of the most significant features of Smith's *Wealth of Nations* was to move debates about value from the theological to the empirical register. Opening up with the proto-sociological move that Smith makes is a notion that the human sciences can be positively founded. Foucault comments that with respect to the task of the political ordering of markets, mercantilism, the case is not "you must not" but "you cannot," an epistemological not a moral criticism.<sup>27</sup> Insofar as this is the case then government is indeed pegged not to truth but to rationality.<sup>28</sup> But it may be a mistake to think that this signals the transition from a moral ordering of relations to an epistemological one; rather, one might argue that the thinkers of the Scottish Enlightenment were establishing a new moral economy, in which subjects of government disclose their own truth through the articulation of interests. Smith, Ferguson and others would certainly not have dissociated the epistemological and the moral. To examine this further we need to dig a little more deeply into eighteenth century debates and, in particular, into Foucault's account of them.

### **A Faustian dissociation of sensibility<sup>29</sup>**

Koselleck describes the period from 1750 to 1850 as a *Sattelzeit*, a period of conceptual flux during which modern constellations of meaning emerged.<sup>30</sup> In a similar vein, Pocock writes of a "Faustian dissociation of sensibility" in the late eighteenth century, involving a split between civic and civil conceptions of subjectivity.<sup>31</sup> Foucault's reflections on civil society take place in the context of his thinking through precisely these transformations of the late eighteenth century. Foucault's *Birth of Biopolitics* is a reflection on this moment, an account of this shift that gives us a valuable way of analysing contemporary power relations, but his conceptualisation leaves out several features of late eighteenth century discourse that, when incorporated into his account, can help to develop and refine it. In particular, Foucault presents the newly forming ethical subject of civil society in terms of an antinomy between the subject of right and the subject of interest. This enables him to capture certain salient features of our political landscapes, but closer attention to the literature of the period suggests much more ambiguity than is captured by this bivalent model. Burchell points out that in the eighteenth century individual self-interest becomes a problem in a newly forming ethico-political model of the subject: "this individual living being, the subject of particular interests, represents a new figure of social and political subjectivity, the prototype of 'economic man' who will become the correlate and instrument of a new art of government."<sup>32</sup> This section explores this, in the hope of restor-

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<sup>26</sup> *Ibid.*, 311. See also Michel Foucault, "Governmentality," in Graham Burchell, Colin Gordon, and Peter Miller (eds.) *The Foucault Effect: Studies in Governmentality* (Chicago: University of Chicago Press, 1991).

<sup>27</sup> Foucault *Birth of Biopolitics*, 283.

<sup>28</sup> *Ibid.*, 311.

<sup>29</sup> John G. A. Pocock, *Virtue, Commerce, and History* (Cambridge: CUP, 1985), 69.

<sup>30</sup> Keith Tribe, "Translator's Introduction," in Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time* (Massachusetts: MIT Press, 1985), x.

<sup>31</sup> Pocock, *Virtue*, 69.

<sup>32</sup> Burchell, "Peculiar interests," 122, 127.

ing a greater range of possibilities for the subject suggested by Burchell's "will become." In other words, before the subject of right and economic man achieved their contemporary stand-off, if that's what it is, what other rival conceptions of subjectivity existed and how were these eclipsed?

We can begin thinking about the "Faustian dissociation" of civic and civil conceptions of subjectivity in the late eighteenth century by reflecting briefly on the dual sense of community that occurs in Kant's work. On the one hand Kant writes of a "universal community": *sensus communis*, public sense, collective reason; on the other hand he writes of the prejudice of vulgar common sense.<sup>33</sup> This twofold idea of community is linked in turn to an ambiguity attending the idea of *Gemeinschaft*, which can mean both *communion* and *commercium*. *Communio* implies fortification, the exclusive sharing of space protected from the outside; *Commercium* implies potentially unlimited exchange and communication. Kant argues that without the latter, the former, the localised community, would never be known.<sup>34</sup> This ambiguity between *communio* and *commercium* plays through eighteenth century Scottish political economy in its confluence of republican and commercial ideas. Foucault's portrayal of these themes flattens this.

Echoing the observations of the writers he has under analysis, Foucault notes a paradox:

*Homo oeconomicus* is someone who pursues his own interests, and whose interest is such that it converges spontaneously with the interest of others. From the point of view of a theory of government, *homo oeconomicus* is the person who must be let alone. With regard to *homo oeconomicus*, one must *laissez-faire*; he is the subject or object of *laissez-faire*.<sup>35</sup>

And yet this person who must be let alone is also one who responds to government. He "appears precisely as someone manageable, someone who responds systematically to systematic modifications artificially introduced into the environment. *Homo oeconomicus* is someone who is eminently governable."<sup>36</sup> Thus from being the partner of *laissez faire*, this subject becomes a site for modification. *Homo oeconomicus* is thus the "partner, the vis-à-vis, and the basic element of the new governmental reason formulated in the eighteenth century."<sup>37</sup> He is both a principle of intelligibility and a means of governmentality. He is Robert Musil's "man without qualities."<sup>38</sup>

Foucault counterpoises the subject of interest to the subject of right. He claims that these are two heterogeneous structures of the subject, both of which animate eighteenth century discourse.<sup>39</sup> To approach the former he refers to David Hume. He notes that in the empiricism of Locke and Hume there appears "the form of a subject of individual choices which are

<sup>33</sup> Immanuel Kant, *The Critique of Judgement*, translated by J. Creed Meredith (Oxford: Clarendon, 1952)

<sup>34</sup> Howard Caygill, *A Kant Dictionary* (Oxford: Blackwell, 1995).

<sup>35</sup> Foucault, *Birth of Biopolitics*, 270.

<sup>36</sup> *Ibid.*, 270.

<sup>37</sup> *Ibid.*, 271.

<sup>38</sup> Robert Musil, *The Man Without Qualities*, translated by Sophie Wilkins and edited by Burton Pike (London: Picador, 1995 [1978]).

<sup>39</sup> Foucault, *Birth of Biopolitics*, 276.



both irreducible and non-transferable."<sup>40</sup> Foucault claims that English empiricism generates a formation of the subject that is novel; it "reveals something which absolutely did not exist before."<sup>41</sup> Eighteenth century debates concerning what animates this subject, including self-preservation, the body or the soul, sympathy, and so on, are not, according to Foucault, what is important: "What is important is the appearance of interest for the first time as a form of both immediate and absolutely subjective will."<sup>42</sup> Homo oeconomicus is the basic element in the new governmental formulation because his interests are spontaneously self-generating. But his twin, the subject of right, has a different formation.

The subject of right is a figure rooted in natural law arguments. As such, he has natural rights, but becomes a subject of right proper only by transferring these in the act of contracting to form a legitimate political authority. Thus this subject "agrees to self-renunciation and splits himself."<sup>43</sup> On one hand he possesses natural and immediate rights, and on the other hand he gives these up in order to become a subject of right under a civil constitution. Foucault observes that this introduces a dialectic of self-transcendence of one part of the subject over the other, and that it institutes a relation of "negativity, renunciation, and limitation" between the two that founds law and prohibition. By comparison, "the subject of interest is never called upon to relinquish his interest."<sup>44</sup>

This dual conception of the subject contains two key features. First, juridical will does not take over from interest, rather interest remains irreducible to the juridical will: "The subject of interest constantly overflows the subject of right."<sup>45</sup> Second, the two are governed by different logics, the logic of spontaneous self-generation versus the logic of self-renunciation and transcendence. In sum: "In the eighteenth century the figure of *homo oeconomicus* and the figure of [...] *homo juridicus* or *homo legalis* are absolutely heterogeneous and cannot be superimposed on each other."<sup>46</sup> In Foucault's account the spontaneous formation of the subject of interest thus stands opposed to the "*pactum subjectionis*" of the jurists.<sup>47</sup>

Foucault offers a very subtle account here. He observes that homo oeconomicus functions within a totality that eludes him and which nevertheless founds the rationality of his egoistic choices.<sup>48</sup> Foucault is attentive to the ambiguity of the apparent lack of transcendence of the subject of interests; it is not that transcendence has disappeared, but rather that it has become opaque and is rendered statistically. This in turn sustains the notion that society is a statistical idea, as it is figured, for example, in the concept of population.<sup>49</sup> This implies that what we're talking about is a changed orientation of the subject to his (sic) interests and to the

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<sup>40</sup> Ibid., 272.

<sup>41</sup> Ibid., 273.

<sup>42</sup> Ibid., Colin Gordon notes the connection between Foucault's comments and the work of Didier Deleule on Hume. Both present Hume as a thinker for whom the real is an accomplished form of the possible. See Gordon, "Foucault in Britain," 259.

<sup>43</sup> Foucault, *Birth of Biopolitics*, 275.

<sup>44</sup> Ibid., 275.

<sup>45</sup> Ibid., 274.

<sup>46</sup> Ibid., 276.

<sup>47</sup> Ibid., 303.

<sup>48</sup> Ibid., 278.

<sup>49</sup> See Foucault, "Governmentality."

whole, dissociation from preceding forms of totality and immersion in an emerging statistical account of population.<sup>50</sup> That is, there is a move from fellowship and civics to civility among strangers. Foucault suggests that this is achieved through a focus on interests, but attention to fellowship and civics is neither missing from Smith's account, nor, as we will see, from Ferguson's.<sup>51</sup>

To examine this more closely I want to explore some of the ways in which in eighteenth century discussion the tension between the civic and the civil produced a number of instabilities and paradoxes. What Foucault phrases as different and irreconcilable conceptions of the subject, intellectual historians have tended to regard as a paradox of civilization.<sup>52</sup> In the writings of the Scottish Enlightenment, for example, the strength of the civic bond and the figure of the virtuous citizen are seen as sustaining the development of an increasingly complex division of labour and accompanying differentiation of tasks (in particular civil and military), growth of material wealth and refinement of manners and mores, to the point where this differentiation and refinement itself begins to threaten the civic bond.<sup>53</sup> This argument is particularly evident in Adam Ferguson's *Essay*, though it also runs through Smith's *Wealth of Nations*, especially if one reads Book V on public works. It is, at its broadest, a concern with the relation between civil and civic life, wealth and virtue.<sup>54</sup>

Thus in the texts of the Scottish Enlightenment there is a third form of the subject, the subject of republican virtue, that is strangely absent from Foucault's account of the emergence of civil society, even though concern for political participation comes through some of his other writings.<sup>55</sup> This subject of virtue stands neither for law and juridical order, the subject of right, nor for commerce, Foucault's subject of interests, but for an older and distinctly republican idea(l) combining bravery in battle and participation in collective order. It is tempting to read this omission of Foucault's in terms of a difference of context between the revolutionary tradition in France and the comparative pragmatism of the Scottish moralists. Where the

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<sup>50</sup> See Ian Hacking, *The Taming of Chance* (Cambridge: CUP, 1990) and Mary Poovey, *A History of the Modern Fact: Problems of Knowledge in the Sciences of Wealth and Society* (Chicago: Chicago UP, 1998).

<sup>51</sup> As regards Smith's concern with fellowship and civics, see Adam Smith, *The Theory of Moral Sentiments* (Glasgow: Liberty Fund, 2009), also see *The Wealth of Nations*. Richard Whatmore argues that Say reads Smith as seeking to unite virtue and self-interest; political economy concerned manners as well as wealth (See Richard Whatmore, *Republicanism and the French Revolution: and Intellectual History of Jean-Baptiste Say's Political Economy* (Oxford: OUP, 2000)).

<sup>52</sup> See, for example, Frank Trentmann (ed.), *Paradoxes of Civil Society: New Perspectives on Modern German and British History* (Berghahn, 2000); Harris, *Civil Society in British History*.

<sup>53</sup> See in particular Pocock's discussion of this process, in John G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: PUP, 1975), Chapter 14.

<sup>54</sup> See Hont and Ignatieff, *Wealth and Virtue*.

<sup>55</sup> See, for example, his attention to participative models of political community. Foucault comments acerbically that in the present, like asking for "lemon and milk" in our tea, we attempt simultaneously to enact two divergent models of political community: the city-citizen game of juridical equality and the shepherd-flock game of a secularized Christian pastoral (Michel Foucault, "Lemon and Milk," in James D. Faubion (ed.), Robert Hurley (trans.), *Power: the Essential Works 3* (London: Allen Lane, 2001); See also Michel Foucault, *Politics, Philosophy, Culture: Interviews and Other Writings 1977-1984*, edited by Lawrence D. Kritzman (London: Routledge, 1988).

French Enlightenment and revolution raised in particularly stark form the question of the juridical coding of the subject and power, the Scottish moralists' realism, consequentialism, and recognition of the opacity of social relations perhaps allowed a space for questions about virtue to linger (maybe these died in France in the wake of the Terror?)<sup>56</sup> According to recent scholarship something of this Scottish pragmatism came through in France with those like Quesnay, Condillac, and Say, who took up Locke's sensationalism, but this does not emerge in policy discussion until the nineteenth century.<sup>57</sup> In any case, the omission of discussion of civic virtue from Foucault's account becomes especially significant when we turn to his treatment of Adam Ferguson.

### **The man without qualities**

Foucault presents his account of the subject of interests primarily through a discussion of Adam Ferguson. This is a strange choice, both because from the vantage point of intellectual history Ferguson's *Essay on the History of Civil Society* (1767) looks like a relative backwater in the debates of the Scottish Enlightenment, and because Ferguson is usually regarded as on the civic republican side of a quarrel about the merits of the new commercial social formation that is emerging.<sup>58</sup> As such, he's not an obvious author to choose to demonstrate the ways in which the case for interests was being made. It will pay us more closely to examine the way Foucault dissects Ferguson's argument.

Foucault begins his analysis by observing that during the late eighteenth century the notion of civil society was presented in a number of ways. He justifies his choice of Ferguson's *Essay* by stating that it is "the most fundamental, almost statutory text regarding the characterization of civil society."<sup>59</sup> He claims that Ferguson delivers the political correlate of "what Adam Smith studied in purely economic terms" (a moment of anachronism on Foucault's part, since in the later eighteenth century arguably there were no "purely economic terms," and a brief glance at Smith's *Theory of Moral Sentiments* undermines Foucault's hasty pigeonholing of

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<sup>56</sup> Marisa Linton, *The Politics of Virtue in Enlightenment France* (London: Palgrave, 2001). Also see Shelley Burt, *Virtue Transformed: Political Argument in England, 1688-1740* (Cambridge: CUP, 1992). Burt suggests that by the mid eighteenth century republican virtue was a lost cause in the British debate. For an account of the incorporation of English republican themes in eighteenth century France see Rachel Hammersley, *The English Republican Tradition and Eighteenth-Century France: Between the Ancients and the Moderns* (Manchester: Manchester University Press, 2010).

<sup>57</sup> See Keith Michael Baker, "Transformations of Classical Republicanism in Eighteenth Century France," *The Journal of Modern History*, vol. 73, no. 1 (2001); Gilbert Faccarello and Philippe Steiner, "Interest, Sensationism and the Science of the Legislator: French 'philosophie économique 1695-1830'," *European Journal of the History of Economic Thought*, vol. 15, no. 1 (2008); François Quastana and Pierre Serna, "Le republicanisme anglais dans la France des Lumières et de la Révolution: mesure d'une présence," *La Révolution française*, vol. 5 (2013).

<sup>58</sup> See Dunn "The Contemporary Political Significance of John Locke's Conception of Civil Society"; Hont and Ignatieff, *Wealth and Virtue*; Oz-Salzberger, *Translating the Enlightenment: Scottish Civic Discourse in Eighteenth Century Germany* (Oxford: Oxford University Press, 1995).

<sup>59</sup> Foucault, *Birth of Biopolitics*, 298.

him as an economist).<sup>60</sup> In good didactic style Foucault highlights four key features of Ferguson's account:

First, civil society understood as an historical-natural constant; second, civil society as principle of spontaneous synthesis; third, civil society as permanent matrix of political power; and fourth, civil society as the motor element of history.<sup>61</sup>

Foucault highlights the thesis of natural sociability: in Ferguson's account "the social bond develops spontaneously. [...] it is both permanent and indispensable."<sup>62</sup> This means that the state of nature is always already a social state, our natural condition is social. Spontaneous synthesis in turn implies that there is no need for an explicit contract or renunciation of rights: "there is no constitution of sovereignty by a sort of pact of subjection."<sup>63</sup> Foucault comments "we are not dealing with a mechanism or system of the exchange of rights. We are dealing with a mechanism of immediate multiplication that has in fact the same form as the immediate multiplication of profit in the purely economic mechanism of interests."<sup>64</sup> He comments that the form is the same, but not the contents, and this is how "civil society can be both the support of the economic process and economic bonds, while overflowing them and being irreducible to them."<sup>65</sup> He observes that what joins men together in civil society "is a mechanism analogous to that of interests, but they are not interests in the strict sense, they are not economic interests. [...] In fact, what links individuals in civil society is not maximum profit from exchange, it is a series of what could be called 'disinterested interests'."<sup>66</sup> Foucault goes on to list the features of instinct, sentiment, and sympathy noted by Ferguson, the "impulses of benevolence," the "loathing of others," both repugnance and pleasure at the misfortune of others, stating that this provides a "distinct set of non-egoist interests, a distinct interplay of non-egoist, disinterested interests which is much wider than egoism itself."<sup>67</sup> In other words, sociability and an entire moral psychology is sketched in the *Essay*. But Foucault tends repeatedly to read backwards from a later separation out of economic from other interests. In other words there is an element of anachronism here on Foucault's part that I think is generated partly by the typology of homo oeconomicus as a pure form, where this is in turn generated by Foucault's abstract way of working,<sup>68</sup> partly due to the lecture format and because his overall concern is to think

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<sup>60</sup> Recent scholarship has done much to rescue Adam Smith from those who would separate his economic thought from his moral theory. See Samuel Fleischacker, *On Adam Smith's "Wealth of Nations": a Philosophical Companion* (Princeton: Princeton University Press, 2005); Nicholas Phillipson, *Adam Smith: an Enlightened Life*, (New Haven: Yale University Press, 2010); Emma Rothschild, *Economic Sentiments* (Cambridge MA: Harvard University Press, 2001).

<sup>61</sup> Foucault, *Birth of Biopolitics*, 298.

<sup>62</sup> *Ibid.*, 299.

<sup>63</sup> *Ibid.*, 300.

<sup>64</sup> *Ibid.*, 301.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> Compare Ian Hunter's observations on the dialectical and evolutionary frame of the "Governmentality" essay in Ian Hunter, "Uncivil Society: Liberal Government and the Deconfessionalisation of Politics," in

through the history of governmentality and the relation between eighteenth and twentieth century liberal thought.

As though noting the tension between communion and commercium, Foucault then goes on to counterpoise the non-local character of the bonds between economic subjects and the localised character of civil society. Where markets will produce a “spontaneous synthesis of egoisms over the whole surface of the globe,” “civil society always appears as a limited ensemble [...] civil society does not coincide with humanity in general.” Rather “Civil society, Ferguson says, leads the individual to enlist ‘on the side of one tribe or community’.” Foucault concludes that “civil society is not humanitarian but communitarian,”<sup>69</sup> and the nation is one of the key forms of expression of civil society. It seems from this that “communitarian” may be Foucault’s take on civic republicanism; however, republicanism has different roots from nationalism, the former signalling political participation and virtue, whereas the latter can rest on the politicization of communitarian sentiment.<sup>70</sup> Foucault locates what he calls the economic bond as playing a strange role here, since it combines a “spontaneous convergence of interests” with a principle of “dissociation with regard to the active bonds of compassion, benevolence, love for one’s fellows, and sense of community.”<sup>71</sup> This implies, according to Foucault, that “the economic bond arises within civil society,” is only possible through it, “but in another way undoes it.”<sup>72</sup> Here Foucault puts his finger on the core argument of Ferguson’s *Essay*, without naming its republican concerns as such. He observes “the more we move towards an economic state, the more, paradoxically, the constitutive bond of civil society is weakened and the more the individual is isolated by the economic bond he has with everyone and anyone.”<sup>73</sup>

The third element that Foucault isolates in Ferguson’s account is “a spontaneous formation of power [that][...] comes about by a de facto bond which links different concrete individuals to each other.”<sup>74</sup> In society, some will assume authority. Thus, “the fact of power precedes the right that establishes, justifies, limits, or intensifies it; power already exists before it is regulated, delegated, or legally established.”<sup>75</sup> It is here that Foucault observes “The juridical structure of power always comes after the event or fact of power itself.”<sup>76</sup> Foucault adds that in Ferguson’s description “civil society secretes its own power that is neither its first condition nor its supplement.”<sup>77</sup> The fourth characteristic of civil society is that it is the motor of history. Foucault outlines how the principle of association is attended by dissociation produced by egoism. This produces instability and dynamism, so that Ferguson talks about three stages of

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Mitchell Dean and Barry Hindess (eds.), *Governing Australia: Studies in Contemporary Rationalities of Government* (Cambridge: CUP, 1998).

<sup>69</sup> Foucault, *Birth of Biopolitics*, 302.

<sup>70</sup> Of course these two conjoin once republican thought is applied to larger entities, in the first instance America in the hands of the founding fathers, but more recently in the context of anti-colonial struggles such as those in Argentina, India and Algeria.

<sup>71</sup> Foucault, *Birth of Biopolitics*, 302.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*, 303-4.

<sup>75</sup> *Ibid.*, 304.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

history: savagery, barbarism and civilization. “The principle of dissociative association is also a principle of historical transformation.”<sup>78</sup> Thus Foucault gives a fairly detailed and sustained exposition of Ferguson’s argument, but he doesn’t scrutinise it; rather it, or Foucault’s description of it, becomes the map of a territory he suggests is opening up.

For Foucault, the emergence of civil society is the “opening up of a domain of non-judicial social relations”:

civil society is characterized by bonds which are neither purely economic nor purely juridical, which cannot be superimposed on the structures of the contract and the game of rights conceded, delegated and alienated, and which, in their nature if not their form, are also different from the economic game.<sup>79</sup>

He suggests that with this notion “we enter into a completely different system of political thought,” with distinct features in different contexts.<sup>80</sup> Foucault states that the kind of analysis found in Ferguson’s text is evidence of a “crossroads,” a moment in the formation of a domain of collective social units that “go beyond the purely economic bond, yet without being purely juridical.”<sup>81</sup> While this polarisation of the purely economic and the purely juridical is rhetorically very successful in clarifying two distinct and heterogeneous modes of the subject and its relation to the social bond, I want to bring into question the idea that in the eighteenth century there was such a thing as a “purely economic bond.” I want to suggest first that when thinking about the significance of Ferguson’s text the metaphor of a roundabout may be more apt than that of a crossroads, since there are more routes converging in Ferguson’s text than those noted by Foucault. In particular I should like first to tease open the concept of “interests” a little more than does Foucault. Secondly, I’d like to bring into question Foucault’s positioning of Ferguson as a proponent of a world founded on interests.

In his discussion, Foucault does little to analyse the concept of “interests,” save for a brief reference to Hume’s innovative thinking on the matter.<sup>82</sup> The concept of interest would repay much closer attention. It is of course Hirschman who provides the now classic argument that the eighteenth century saw the emergence of the *doux commerce* thesis: the argument that interests could be more reliable, pacific, that is governable, than the passions.<sup>83</sup> Hirschman stresses that there has been “semantic drift” with respect to the concept of interests; that is, this concept is one with a history, a history that has been a battleground since the seventeenth century because of its close relation to concepts of self and political power. More specifically,

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<sup>78</sup> Ibid., 306.

<sup>79</sup> Ibid., 308.

<sup>80</sup> Ibid. Pages 309-10 of the text gives a brief comparison of Germany with its stand-off between civil society and the state, England and its question of government, and France and the third estate. Significantly though, all three are couched within the idea that the transformation that’s effected is one from government through wisdom to government through calculation.

<sup>81</sup> Ibid., 308.

<sup>82</sup> Faccarello and Steiner, “Interest, Sensationalism and the Science of the Legislator,” also note the brevity of Foucault’s treatment of this concept.

<sup>83</sup> Albert O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism Before its Triumph* (Princeton: Princeton University Press, 1977).

Hirschman observes that in Hume's account in the *Essays* of 1742 interest is equated with avarice, but this has changed by the publication of Smith's *Wealth of Nations* in 1776. Observing that the interested are more easily governed, that the methodical pursuit of private interest engenders *doux commerce*, Hirschman quotes Steuart "were a people to become quite disinterested, there would be no possibility of governing them."<sup>84</sup> There is thus a governmental aspect to the subject of interests.<sup>85</sup> While Foucault's lecture helpfully locates this, there is much more to be said about the role of the concept of interest in the political and economic thought of this period.<sup>86</sup>

As regards the second point above, Foucault's account of Ferguson places the latter firmly as a proponent of the commercial subject of interests. This is odd to say the least. Oz-Salzberger notes the distinctiveness of Ferguson's position. Focusing on the particular polemical import of the *Essay*, she observes that while on one hand it can be read as a "last ditch attempt to preach antiquated moral community to a modern commercial society,"<sup>87</sup> it can on the other hand be read "as a pioneering work where new things were done with old language."<sup>88</sup> Carefully distinguishing jurisprudential and civic arguments, she points out that where for Smith and Hume a good political system rested not on civic virtue but on legislation, Ferguson opposed this. According to Ferguson, material progress would not secure civic virtue, in fact it threatened to undermine it. Ferguson thus reiterates the importance of the citizen's militia: opposing the idea, propounded by Smith and Hume, that the key to maintaining a good political system was a robust system of legislation, Ferguson holds onto the centrality of civic virtue.<sup>89</sup> This might be seen as a reactionary idea, but Oz-Salzberger interprets Ferguson's text as an attempt to "dig better foundations for the civic idea of the polity"; this is why he "claimed for republican language a concept [civil society] which had so far served mainly in the language of natural jurisprudence."<sup>90</sup> In doing so she highlights the way in which Ferguson mobilises "the term civil society to halt the pillaging of civic terminology in favour of the new dis-

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<sup>84</sup> Steuart, quoted in Albert O. Hirschman, "The Concept of Interest: from Euphemism to Tautology," in *The Essential Hirschman* (New Jersey: Princeton University Press, 2013), 195-213, 200.

<sup>85</sup> Hirschman, "The Concept of Interest," 198. See also Stephen Holmes, *Passions and Constraint: on the Theory of Liberal Democracy* (Chicago: Chicago University Press, 1995); quoting Shaftesbury, Holmes notes that "[t]he self-interested agent is 'cool and deliberate.' He is reliable, predictable, calculable, and susceptible to influence by others" (*ibid.*, 540).

<sup>86</sup> See also J. A. W. Gunn, "'Interest Will Not Lie': a Seventeenth-Century Political Maxim," in *Journal of the History of Ideas*, vol. 29, no. 4 (1968) on the way the concept changes in Britain through the seventeenth century.

<sup>87</sup> Fania Oz-Salzberger, "Civil Society in the Scottish Enlightenment," in Sudipta Kaviraj and Sunil Khilnani (eds.) *Civil Society: History and Possibilities* (Cambridge: CUP, 2001), 61. See also Hont and Ignatieff, *Wealth and Virtue*.

<sup>88</sup> Oz-Salzberger, *Civil Society*, 61.

<sup>89</sup> "It is not in mere laws, after all, that we are to look for the securities to justice, but in the powers by which those laws have been obtained, and without whose constant support they must fall to disuse. Statutes serve to record the rights of a people, and speak the intention of parties to defend what the letter of the law has expressed: but without the vigour to maintain what is acknowledged as a right, the mere record, or the feeble intention, is of little avail" (Ferguson, *Essay*, Part III, section VI, 166).

<sup>90</sup> Oz-Salzberger, "Civil Society," 61

course of political economy";<sup>91</sup> an attempted reversal of lines of force that should have interested Foucault. Oz-Salzberger notes that the text had more impact in Germany than in Scotland and England, and that in the former its future was "bürgerlich, not civic";<sup>92</sup> she concludes that the civic use Ferguson made of the term "civil society" made his republican position "almost untranslatable."<sup>93</sup> Ironically Foucault seems to have accepted this bürgerlich reading.

## Conclusion

Men who forget the etymology of the words they use erase their moral logic and eventually de-civilize their society.<sup>94</sup>

"I am not a professional historian; nobody is perfect."<sup>95</sup>

Foucault's work is a fecund source of ideas, associations, and new ways of looking; he is original and iconoclastic, helpful for orienting one's thinking. His writing is perhaps not, then, best apprehended using the methodological protocols of the professional historian,<sup>96</sup> but for its capacity to illuminate and spark new thought. In particular in the present context, Foucault assists in our conceptualizing civil society so that it is not a rallying cry but a phenomenon requiring investigation.

Foucault suggests that we think about concepts such as civil society by examining the terms of debate they hold in place: how is it, for example, that ideas of community as pre-political and as inhering in civil society have come to dominate our political imaginations? Foucault's eschewal of a normative account of civil society is a refusal of the defining constitutive fiction of political community. It suggests we must look elsewhere for an account of our practices of government, and that we should seek to unseat the naturalness of idea(l)s of civil society as already existing "community," looking instead at what the notion of civil society makes possible.

Foucault's account of the "transactional reality" that is civil society is one in which the subject of right and the subject of interest are simultaneously counterpoised and combined. This is perceptive of the ways in which we are addressed both as legal subjects and as economic, social, and biological beings. In my view it is one of the most astute diagnoses of the

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<sup>91</sup> Ibid., 65.

<sup>92</sup> Ibid., 62, 81. 'Bürger', of course, can mean both 'bourgeois' and 'citizen.' Oz-Salzberger observes that the term does not imply participation, civic interaction and turbulence but civil harmony. We should note, though, that this reduction of 'bürger' to 'bourgeois' is in no small part an effect of Marx's rendering of the two synonymous and would thus seem to be a little later than Oz-Salzberger suggests. Note also that neither Hume, Smith, nor Ferguson make consistent use of the term civil society, instead they use the terms state, nation, and community.

<sup>93</sup> Ibid., 78.

<sup>94</sup> Ibid.

<sup>95</sup> Michel Foucault, Ira Allen Chapel, University of Vermont (October 27, 1982), cited in Allan Megill, "The Reception of Foucault by Historians," *Journal of the History of Ideas*, vol. 48 (1987), 117.

<sup>96</sup> See Keith Tribe, "The Political Economy of Modernity: Foucault's Collège de France lectures of 1978 and 1979," *Economy and Society* vol. 38, no. 4 (2009).



dilemmas of modern political rationalities available. And yet in leaving out from analysis the subject of virtue so vividly painted by the Scottish moralists, amongst them Ferguson, Foucault documents the eighteenth century as already closing toward our present. These eighteenth century debates might be used, by contrast, to destabilise our dominant figures of thought. This was a period when concepts now ossified were in flux; retrieving their multivalences and old associations, their moments of reverse discourse, may help break open the fixity of the terms of debate of the present without recourse to romantic notions of “the people.” This, at least, has been my hope in reading Foucault a little against himself.

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